



Virginia Department of Planning and Budget **Economic Impact Analysis**

9 VAC 25-191 Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations

Department of Environmental Quality

Town Hall Action/Stage: 5978 / 9661

July 28, 2022

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

As a result of a 2021 periodic review², the State Water Control Board (Board) is proposing to repeal an obsolete regulation that contains the procedures and requirements for discharges from concentrated animal feeding operations (CAFO) under the Virginia Pollutant Discharge Elimination System Permit (VPDES) general permit program. CAFOs would continue to be regulated through the issuance of VPDES individual permits.

Background

In order to comply with the United States Environmental Protection Agency's (EPA's) federal CAFO rule, the general permit rules were adopted in 2004 with an effective date of January 1, 2006. As is the case with all general permits, it had the standard five-year expiration date at the end of 2010. According to DEQ, between the time the regulation was adopted and its effective date, several federal court cases were decided that affected the CAFO rule, particularly

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2069>

relating to the public notice requirements. The general permit rules in this regulation did not require public notice, and as a result the Board has never issued a permit under this regulation. The regulation became obsolete after its expiration date at the end of 2010. Now, the Board proposes to repeal it in its entirety. CAFO permits have been and will continue to be issued under a separate regulation (9 VAC 25-31) governing individual permits that require public comment.

Estimated Benefits and Costs

The general permit rules being repealed in this action had an expiration date of December 1, 2010 and have been obsolete since then. Also, no general permits have been issued under this regulation. Thus, no economic impact is expected from repealing this regulation other than eliminating possibly confusing language from the Virginia Administrative Code.

Businesses and Other Entities Affected

The proposed repeal of this regulation would not affect any entities.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, this action eliminates language that have been obsolete since the end of 2010. Thus, no adverse impact on any entity is indicated.

Small Businesses⁴ Affected:⁵

The proposed repeal does not adversely affect small businesses.

³ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁴ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁵ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Localities⁶ Affected⁷

The proposed repeal does not affect localities or introduce costs for local governments.

Projected Impact on Employment

No impact on employment is expected.

Effects on the Use and Value of Private Property

No impact on the use and value of private property or on real estate development costs are anticipated.

⁶ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.